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Attorneys for State Defendants
Hormann, Krings, Riddle, Wilcox and Oregon State Police

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF OREGON

NICHOLAS JAMES MCGUFFIN, as an
individual and as guardian *ad litem*, on behalf
of S.M., a minor,

Plaintiff,

v.

MARK DANNELS, PAT DOWNING,
SUSAN HORMANN, MARY KRINGS,
KRIS KARCHER, SHELLY MCINNES,
RAYMOND MCNEELY, KIP OSWALD,
MICHAEL REAVES, JOHN RIDDLE, SEAN
SANBORN, ERIC SCHWENNINGER,
RICHARD WALTER, CHRIS WEBLEY,
ANTHONY WETMORE, KATHY WILCOX,
CRAIG ZANNI, DAVID ZAVALA, ESTATE
OF DAVID E. HALL, VIDOCQ SOCIETY,
CITY OF COQUILLE, CITY OF COOS
BAY, and COOS COUNTY,

Defendant.

Case No. 6:20-cv-1163-MK (Lead Case)
3:21-cv-1719-MK (Trailing Case)

STATE DEFENDANTS' RESPONSE TO
RICHARD WALTER'S CROSS-CLAIMS

NICHOLAS JAMES MCGUFFIN, as an individual and as guardian ad litem, on behalf of S.M., a minor,

Plaintiff,

v.

OREGON STATE POLICE,

Defendant.

Cross-Defendants Susan Hormann, Mary Krings, John Riddle, Kathy Wilcox, and Oregon State Police (collectively “Cross-Defendants”), by and through their attorneys, hereby answer and raise affirmative defenses to the cross-claim set forth in “Defendant Richard Walter’s Answer and Affirmative Defenses to Plaintiffs’ Second Amended Complaint and Cross-Claims and Cross-Claim against Co-Defendants” (ECF 162, hereinafter, the “cross-claim”) as follows:

I.

Cross-Defendants deny each and every allegation of the cross-claim.

II.

FIRST AFFIRMATIVE DEFENSE

Statute of limitations and laches

The cross-claim is barred by the statute of limitations and laches.

III.

SECOND AFFIRMATIVE DEFENSE

Statute of ultimate repose

The cross-claim is barred by the applicable statute of ultimate repose, or other statutes, rules, or laws which limit or prescribe the time in which the cross-claims had to be filed and served.

IV.

THIRD AFFIRMATIVE DEFENSE

Qualified immunity

To the extent that any action by Cross-Defendants violated a right of plaintiffs, no reasonable public official under the circumstances would have understood that their conduct represented a violation of plaintiffs' clearly established rights. Cross-Defendants are entitled to qualified immunity.

V.

FOURTH AFFIRMATIVE DEFENSE

Oregon Tort Claims Act limitations (State law claims)

The cross-claim is subject to, and must be brought under, the Oregon Tort Claims Act and the procedures, limitations, defenses, and immunities in ORS 30.260 *et seq.*, including, but not limited to, the limitations on liability of the State for personal injury therein.

Cross--Defendants are entitled to defenses, including, but not limited to, the following:

- a. Failure to provide timely notice of claim.
- b. Cross-Defendants are entitled to discretionary immunity.
- c. Cross-Defendants are entitled to apparent authority immunity.
- d. Cross-Defendants' liability is limited according to the applicable tort limits set forth in the Oregon Tort Claims Act.

VI.

FIFTH AFFIRMATIVE DEFENSE

Absolute and qualified privilege (state law claims)

Because Cross-Defendants' actions were taken in the course of, or were incidental to, judicial or quasi-judicial proceedings, those actions are privileged, and they are immune from the state law claims.

VII.

SIXTH AFFIRMATIVE DEFENSE

Fault of others

Some or all of the harm complained of was the result of the actions or inactions of Plaintiff McGuffin and his authorized agents or the fault of others.

VIII.

SEVENTH AFFIRMATIVE DEFENSE

Apportionment (State law claims)

Pursuant to ORS 31.600 to 31.610, if the Court enters Judgment for Plaintiffs, it must apportion Plaintiffs' total damages, if any, among the parties identified in ORS 31.600 to 31.610, in accordance with the percentages of fault as determined by the jury, with the liability of each such party being several only.

IX.

EIGHTH AFFIRMATIVE DEFENSE

Share of Other Tortfeasors (state law claims)

Plaintiffs' claims must be reduced by the share of the obligations of the other tortfeasors pursuant to ORS 31.800 to 31.815.

X.

NINTH AFFIRMATIVE DEFENSE

Failure to state a claim (Fed. R. Civ. P. 12(b)(6))

The cross-claim fails to allege facts sufficient to state a claim for relief.

XI.

TENTH AFFIRMATIVE DEFENSE

Sole cause

Plaintiff McGuffin's criminal defense attorney and authorized agent was the sole cause of Plaintiffs' harm.

WHEREFORE Cross-Defendants pray as follows:

1. That Defendant Walter be denied recovery upon the cross-claim, and that the cross-claim be dismissed with prejudice in its entirety;
2. That the Cross-Defendants recover their reasonable attorney fees, costs, and disbursements expended in defense of the cross-claim pursuant to 42 U.S.C. § 1988 and Fed. R. Civ. P. 11; and
3. That the Cross-Defendants be granted such other and further relief as this Court deems just and equitable.

DATED May 12, 2023.

Respectfully submitted,

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s/ Jesse B. Davis

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